

MITT ROMNEY Governor

KERRY HEALEY
Lieutenant Governor

COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS

DEPARTMENT OF ENVIRONMENTAL PROTECTION

ONE WINTER STREET, BOSTON, MA 02108 617-292-5500

ELLEN ROY HERZFELDER Secretary

ROBERT W. GOLLEDGE, Jr. Commissioner

November 21, 2003

Finn Murphy, Chairman Board of Selectmen Town and County of Nantucket 16 Broad Street Nantucket, MA 02554

Re:

Surfside Wastewater Treatment Facility

ACOP-BO-03-1G002

Groundwater Discharge Permit SE#1-200

Dear Finn:

Thank you for forwarding the corrected Exhibit B for the ACOP-BO-03-1G002. It also came to my attention in making this substitution that Exhibit A, your current permit, was inadvertently omitted from our October 30th mailing. Accordingly, I enclose a complete copy of the Order with both Exhibits for your records. Please note that the substitution of Exhibit B does not alter the effective date of the Order of October 30, 2003, so this date should continue to be used for the purposes of ensuring compliance with deadlines established in the Order.

Please do not hesitate to call if you have any questions.

Very truly yours,

Sharon M. Pelosi, Director

Watershed Permitting Program

cc:

David Delorenzo, DEP SERO Alan Slater, DEP Boston

Jeffrey Willet, Nantucket DPW

Tom Parece, EarthTech

COMMONWEALTH OF MASSACHUSETTS EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS DEPARTMENT OF ENVIRONMENTAL PROTECTION

IN THE MATTER OF:

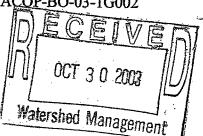
Surfside Wastewater Treatment

Facility

Town of Nantucket

RE: ADMINISTRATIVE CONSENT ORDER

FILE NO. ACOP-BO-03-1G002



I. THE PARTIES

- 1. The Department of Environmental Protection (hereinafter, the "Department") is a duly constituted agency of the Commonwealth of Massachusetts. The Department maintains a primary office at One Winter Street, Boston, Massachusetts 02108, and a regional office located at 20 Riverside Drive, Lakeville, Massachusetts 02347. The Department is empowered to enforce the Massachusetts Clean Water Act (M.G.L. c. 2), §§ 26-53) and regulations issued thereunder, including 314 CMR 5.00 through 12.00. The Department is authorized to assess Civil Administrative Penalties by G.L., C.21A S.16 and regulations promulgated thereunder at 310 C.M.R. 5.00.
- 2. The Town of Nantucket ("Nantucket") is a body politic and division of the Commonwealth of Massachusetts. It is represented by its Board of Selectmen. Its offices are located at 16 Broad Street, Nantucket, Massachusetts 02554. Nantucket receives and treats sewage from residential and commercial establishments at the Surfside Wastewater Treatment Plant (hereinafter, the Facility).

II. STATEMENT OF FACT AND LAW

- Nantucket owns, operates and maintains a sewage treatment facility ("Facility") at South Shore Road, Nantucket, Massachusetts, which was permitted pursuant to 314 CMR 5.00 and Groundwater Discharge Permit SE #1-200 dated March 4, 1992.
- 4. In 2000, 2001, 2002 and 2003, the Department alleges that Nantucket's Facility exceeded the limits of its existing permit (#1-200) on numerous occasions as more particularly described in the Discharge Monitoring Reports on file with the Department. The Department alleges that Nantucket failed to report these violations to the Department. Although Nantucket has managed to reduce flows in the last twenty-four months through removal of Infiltration/Inflow ("I/I"), the Department alleges that there have still been exceedances of the permitted flow limit. Nantucket disagrees with the Department's allegations in that, based on the permit requirements, Nantucket reported the required flow data in its Monthly Discharge Monitoring

Reports, and has not exceeded the limits of the existing permit. The parties have been involved in a dispute regarding the meaning and interpretation of the existing permit.

- 5. Nantucket is preparing a Comprehensive Wastewater Management Plan/Environmental Impact Report ("CWMP/EIR").
- 6. The alleged violations of permit effluent limits and monitoring requirements of permit #1-200, enumerated above, if true, entitle the Department to relief.
- 7. Without admitting the existence of any violations, but for the purpose of resolving this matter between Nantucket and the Department as expeditiously as possible, Nantucket enters into this Administrative Consent Order with Penalties (hereinafter, Order or Consent Order) with the Department, acknowledges the Department's authority to issue this Order and waives all rights it may have to administrative or judicial review of the issuance of this Order.

III. ORDER

- 8. Now therefore, this Order is issued by the Department under the authorities set forth above:
- 9. Nantucket shall immediately take steps to comply with all of the terms and conditions of Permit #1-200. The Permit is attached as Exhibit A to this Order and its terms and conditions are incorporated by reference herein. Violations of the permit by Nantucket are actionable by the Department under the Administrative Penalty Act or through other independent enforcement actions as set forth in Section IV of this Order. The mutual goal of the parties is to re-write the Permit to meet the 20 year planning period conditions predicted in the CWMP/EIR.
- 10. Except as authorized by this Order, the Town shall not authorize or allow any new connections to or extensions of its sewer system except those for which the Town Board of Health has found and certified to the Department, or the Department has itself determined, are necessary to abate an imminent hazard to public health or the environment caused by inadequate sewage disposal.
- 11. No further connections shall be made to the Facility until or unless a new Facility is operational as set forth in Paragraph 12 below except as follows:
 - a. Sewer permit applications #:W028741 "Sturgis Pines Nominee Trust" with a flow of 11,550 gallons per day (gpd) and dated 6/13/02; 205488 "Cliff Acquisitions Inc." with a flow of 21,810 gpd and dated 7/24/02; W030009 "Nantucket Public Schools" with a flow of 2,530 and dated 8/16/02; W030737 "Sherburne Commons Inc." with a flow of 16,260 gpd and dated 8/27/02; W032136 "Nantucket Electric Co." with a flow of 22,550 gpd and dated 11/6/02; W032340 "Duane Jones" with a flow of 2,200 gpd and dated 11/4/02; W032361 "Beezer Trust" with a flow of

5,280 gpd and dated 11/27/02; W035152 - "Great Point partners LLC" with a flow of 7,195 gpd and dated 7/28/03; W041324 - "Nantucket Homes for People, Inc." with a flow of 9,240 gpd and dated 8/6/03; and W206432 - "Donald Holdgate" with a flow of 3,960 gpd and dated 9/8/03 will be issued and flows there from connected to the Facility, subject to concurrence from all state and local agencies exercising jurisdiction over the sewer permit applications and formal notice to the Department of such connections when they occur;

- b. Within 30 days of the effective date of this Order, the Town shall submit to the Department, for its review and approval, a plan for the establishment and implementation of a sewer bank to allow the town to issue permits for new sewer connections or extensions or authorize increases in flow from existing sewer connections or extensions. The plan for this sewer bank shall include a program to restrict connections to the sewer system as described in paragraph (iv) below, as well as quarterly reporting to the Department, in accordance with the notice provisions of the Order set forth below, of all connections and extensions which withdraw flow from the sewer bank balance based on the method set forth in 314 CMR 7.15. If it is not practicable to calculate sewage flow from any particular parcel in this manner, the Town must state why and may estimate such flow using metered water use for that property. The sewer bank will be apportioned as follows:
 - i. Initial flow balance of 20,000 gallons per day.
 - ii. Notwithstanding the sewer bank, upon submission to the Department of a copy of an executed contract with a notice to proceed with a Massachusetts Registered Professional Engineer for the preparation of plans and specifications to upgrade the Facility to Class I discharge standards, as outlined in Paragraph 12 below, the Town may issue sewer permits for the sewage flows originating from the Nantucket Harbor Watershed Overlay District as further described on the maps attached to this Order as Exhibit B. These flows shall be in addition to the sewer bank balance allowed under paragraphs 11(b)(i),(iii) and (iv).
 - iii. Upon submission to the Department of a copy of an executed construction contract with a notice to proceed with an authorized construction contractor for the construction of a Facility to meet Class I discharge standards, as outlined in Paragraph 12 below, the sewer bank balance established in Paragraph 11.b.i. will be increased by an additional 90,520 gallons per day.
 - iv. Except as specifically identified and authorized by this Order, no further connections shall be made to the Facility until or unless a new

Facility is operational as set forth in Paragraph 12 below except as follows: The Town shall submit to the Department for its review and approval a program for restricting connections to the sewer system. At a minimum, the program shall provide for the removal of two gallons of infiltration and inflow for each additional gallon of wastewater that will be discharged to the sewer system. Thereafter, the Town shall implement the program as approved by the Department. Proof of removal in a form consistent with standard engineering practices and acceptable to the Department shall be submitted in accordance with the notice provisions of the Order set forth below. Failure to implement the program will be a violation of this Order.

- 12. Construction Of Upgraded Wastewater Treatment To Meet Class I Discharge Standards Pursuant to 314 CMR 5.00 and 6.00.
 - a. By 9/30/03, the Town shall submit to the Department and to the MEPA Office ("MEPA") of the Massachusetts Executive Office of Environmental Affairs for review and comment a Draft CWMP/EIR that shall include a recommendation for upgrading wastewater treatment to Class I discharge standards.
 - b. By 3/30/04, the Town shall submit to the Department and to MEPA for review and approval a Final CWMP/EIR that shall include a recommendation for upgrading wastewater treatment to Class I discharge standards.
 - c. By 7/1/04, the Town shall commence preparation of plans and specifications for the wastewater treatment facilities identified in the Final CWMP/EIR as approved by the Department and MEPA.
 - d. By 7/1/05, the Town shall submit to the Department a complete groundwater permit application pursuant to 314 CMR 5.00 for the wastewater treatment facilities identified in the Final CWMP/EIR as approved by the Department and MEPA.
 - e. By 7/1/05, the Town shall submit to the Department final plans and specifications for the wastewater treatment facilities identified in the Final CWMP/EIR as approved by the Department and MEPA.
 - f. By 4/1/06, the Town shall commence construction of the wastewater treatment facilities identified in the Final CWMP/EIR as approved by the Department and MEPA.
 - g. By 4/1/08, the Town shall complete construction of the wastewater treatment facilities identified in the Final CWMP/EIR as approved by the Department and MEPA.

h. By 6/30/08, the Town shall achieve full operation of the wastewater treatment facilities identified in the Final CWMP/EIR as approved by the Department and MEPA in accordance with all applicable regulations and permits.

Failure to construct the wastewater treatment facilities identified in the Final CWMP/EIR as approved by the Department in accordance with the above schedule shall be a violation of this Order.

- 13. By January 1, 2004, Nantucket shall submit to the Department evidence of the existence of a locally adopted regulation or bylaw designed to minimize the introduction of toxic substances and other pollutants to the Facility and encouraging the reduction of flow to the Facility, together with a program for enforcing these local laws.
- 14. Failure to complete the Facility by the time specified may shall result in penalties or a modification by the Department to this Order imposing additional terms and conditions necessary to treat the existing flow and to prevent damage to the environment.
- 15. Should the Department determine that Nantucket is making inadequate progress under the terms of this Consent Order towards the completion of a Facility capable of treating effluent to Class I Standards by April 1, 2008, it may issue an order forbidding further connections to the existing facility and require such other actions as are necessary to insure protection of the ground and surface waters of the Commonwealth.
- 16. For the purposes of determining compliance with the Consent Order, the Department shall be permitted access to the Property and to any connections thereto as needed for the duration of this Consent Order.
- 17. This Consent Order does not constitute a permit under 314 CMR 5.00 or 314 CMR 7.00. The Town shall apply for and obtain all permits and approvals required to accomplish the objectives set forth in this Consent Order. Nantucket's failure to identify and obtain needed permits or the failure to obtain outside financial assistance shall not be a basis for extending time periods set forth hereunder or excusing nonperformance unless delay is caused by the Department.
- 18. Within 30 days of the effective date of this order, Nantucket shall submit a maintenance and monitoring plan to the Department's Southeast Regional Office for review and approval ("Maintenance and Monitoring Plan"). This Plan includes a plan of action for maintaining the Existing System prior to the implementation of an upgraded wastewater treatment facility in accordance with paragraph 12 above. Once approved, the Maintenance and Monitoring Plan will be attached as Appendix B, and the terms and requirements thereof, will be incorporated by reference into this

Consent Order. Violations of said Plan are subject to stipulated penalties in accordance with Paragraph 23 below.

- 19. Nantucket shall submit quarterly reports to the Department beginning three (3) months after the Effective Date of this Consent Order. The report shall detail the efforts undertaken to achieve compliance with this Consent Order over the prior three (3) month period. Reports shall include: for each separate sewer bank, identification and flow amount of any new connections to the existing Facility, identification of specific locations and efforts to reduce infiltration and inflow to the Facility's sewer system, a written summary of actions taken under Appendix B of this Consent Order, a discussion of impediments Nantucket encountered and progress made towards completing a Class I Facility, and a description of what Nantucket plans to accomplish over the next three (3) month period
- 20. Prior to the Compliance Date, Nantucket may continue to discharge sewage to the Facility subject to the conditions set forth above.
- 21. Nantucket shall inform the Department in writing whenever it has reason to believe that any deadlines set forth in this Order will not be met, or permit violations or permit excursions occur, setting forth the reasons for the delay and the length of additional time required to complete the action. By written amendment to this Consent Order, the Department may, in its discretion, extend any time period set forth herein, which extension shall not be unreasonably withheld.

IV. PENALTY ASSESSMENT

- 22. For the alleged violations set forth in Section II, Nantucket shall pay a penalty in the amount of twenty thousand dollars (\$20,000). In consideration of Nantucket's agreement to abide by the terms and conditions of this order, and most particularly the construction deadlines contained in Section III(12) above, this penalty shall be suspended subject to compliance with this order. The Department shall not seek additional civil administrative penalties for the violations alleged in this Order that occurred before the effective date of this Order. Nantucket reserves its rights to challenge any such future actions by the department.
- 23. If Nantucket materially fails to comply with any of the actions or deadlines established by this Consent Order or incorporated by reference herein, or otherwise materially violates any of the terms or conditions of this Consent Order, Nantucket agrees to pay a stipulated penalty in the amount of \$1,000 per violation for each day, or any portion thereof, that such violation continues. Per day amounts shall double on the thirtieth (30th) consecutive day of noncompliance, treble on the sixtieth (60th) consecutive day of noncompliance, and quadruple on and thereafter the ninetieth (90th) consecutive day of noncompliance, with the maximum per day penalty not to exceed \$25,000.00 per day, per offense. All penalties shall begin to accrue the day after performance is due or the day a material violation occurs, and shall continue to accrue through the final day of the

correction of the violation or completion of the activity. Nantucket reserves its rights to challenge any such future actions by the department.

- 24. The stipulated penalties set forth herein shall not preclude the Department from electing to pursue alternative remedies or alternative civil penalties which may be available by reason of Nantucket's failure to comply with the requirements of this Consent Order. In the event the Department collects alternative civil administrative penalties, Nantucket shall not be required to pay stipulated penalties pursuant to this Consent Order. Nantucket reserves its rights to challenge any such future actions by the department.
 - 25. All payments of penalties shall be made by certified check, cashier's check or money order, payable to the "Commonwealth of Massachusetts". The name Nantucket, its Federal Employer Identification Number ("FEIN") and the Consent Order file number, ACOP-BO-03-1G002, should be clearly printed on the face of the check or money order. All penalty payments shall be sent to the following address:

Commonwealth of Massachusetts
Department of Environmental Protection
P.O. Box 3584
Boston, MA 02241-3584
Attn: Director, Watershed Permitting Program

26. Other than as noted above, the Department reserves all of its rights to enforce against violations that occur after the date of this Consent Order through an independent action and Nantucket reserves its rights to challenge any such future actions.

V. ADDITIONAL PROVISIONS

- 27. The Department shall have the power to extend or waive any deadline, time period, term, or condition contained herein as the Department, in its sole discretion, may deem fit, provided such extension or waiver shall not be unreasonably withheld, provided also that no extension or waiver will be effective which contravenes any provision of any applicable statute or regulation
- 28. This Order shall apply to and bind Nantucket and its officers, employees, agents, successors and assigns. Nantucket shall not violate this Order, nor suffer or allow its employees, agents, or contractors to violate this Order.
- 29. Nothing in this Order shall be construed as, or operate as, barring diminishing, adjudicating, or in any way affecting any legal or equitable right of the Department to issue any future Order with respect to the subject matter covered by this Order, or in any way affecting any other claim, action, or demand which the Department may have with respect thereto.

- 30. This order does not constitute a permit and is not and shall not be interpreted to be a modification of the existing permit, issued pursuant to 314 CMR 5.00; nor shall it in any way relieve Nantucket of its obligation to obtain any permits and comply with the requirements of any applicable permits or with any other federal or state law or regulation. Nantucket shall comply with all conditions and effluent limitations of its existing groundwater discharge permit and any modification or renewal thereof.
- 31. Except where otherwise specified, each submittal required by this Order shall be made to:

Department of Environmental Protection Division of Water Pollution Control 20 Riverside Drive Lakeville, Massachusetts 02347 Attention: Jeffrey E. Gould

And

Department of Environmental Protection
Watershed Permitting Program
One Winter Street, Floor 6
Boston, MA 02108
Attn: Alan D. Slater, P.E.

32. This Order is issued on the date it is signed by the Department.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

DATE: 10/50/03

Glenn S. Haas, Director

Division of Watershed Management

DATE: 10/22/03	BY: Repland
DATE: Oct 22, 03	BY: Jemothy Money inc
DATE: 10/22/03	BY: June Stayer
DATE:	BY:
DATE:	BY:

For the Nantucket Board of Selectmen

DISCHARGE PERMIT

Name and Address of Appli	cant: Nantucket Dept. of Public Works
P.O. Box 239	, Nantucket, Mass 02554
Date of Application:	1-3-91
Application/Permit No.	1-200
Date of Issuance:	March 4, 1992
Date of Expiration:	March 3, 1997
AUTH	ORITY FOR ISSUANCE
	y granted by Chapter 21, Sections 26-53
	ral Laws, as amended, the following
	The Nantucket Department of Public Works
	permittee") authorizing discharges from
the Surfside Wastewater Tr	reatment Plant to the ground
such authorization being e the permittee with all ter hereinafter set forth.	expressly conditional on compliance by ms and conditions of the permit
This permit shald become e	effective on the date of the Director's
signature and shall expire	on March 3, 1997
Comon Donahoe	March 4, 1992 Date
Brian Donahoe, Director Division of Water Pollutio	Date n Control

I. SPECIAL CONDITIONS

A. Effluent Limits

The permittee is authorized to discharge into the ground from the groundwater treatment facilities for which this permit is issued a treated effluent whose characteristics, within one month after start-up of the facilities and continuing thereafter, shall not exceed the following values:

Discharge Limitations

Effluent Characteristics	<u>Average</u>	Maximum
Flow, gallons per day	1,800,000	5,800,000
BOD, 5-day, 20°C	215 mg/l	230 mg/l
Total Suspended Solids	225 mg/l	250 mg/l
Oils & Grease	15	5.0 mg/l

- a) the pH of the effluent shall not be less than 6.5 nor greater than 8.5 at any time.
- b) The discharge of the effluent shall not result in violations of the SA water quality limits established for the surface waters downgradient of the discharge.
- When the effluent discharged for a period of 90 consecutive days exceeds 80 percent of the permitted flow limitations, the permittee shall submit to the permitting authorities projected loadings and a program for maintaining satisfactory treatment levels consistent with approved water quality management plans.

B. Monitoring and Reporting

 The permittee shall monitor and record the quality and quantity of effluent prior to discharge to the filter beds according to the following schedule and other provisions.

<u>Parameter</u>	Minimum Frequency of Analysis	Sample Type
Flow	Daily	Average-Maximum
рН	Weekly	Grab
BOD	Weekly	8-hour composite
TSS and Total Solids	Weekly	8-hour composite
Oil & Grease	Weekly	Grab

The permittee shall Monitor, record and report the quality of water in both the Class III compliance wells and the discharge permit wells, previously installed (CB-1, CB-2, CB-3, CB-4; N-3, N-9, N-1, N-10), according to the following schedule and other provisions:

Ammonia	1 x quarterly	
Surfactants	и.	
Nitrate Nitrogen	11	
Total Nitrogen	11	
Total Coliform	11	
Static Water Level	11	

Any grab sample or composite sample required to be taken less frequently than daily shall be taken during the period of Monday through Friday inclusive. Eight hour composites and grab samples shall be taken between 8:00 a.m. and 6:00 p.m. All composite samples shall be taken over the operating day.

The permittee shall submit all reports on an acceptable form, properly filled and signed, on the last day of every month, beginning thirty days after the issuance of this permit, to the Regional Director, Department of Environmental Protection, Southeast Regional Office, Lakeville Hospital, Lakeville, Mass 02346 and to the Director, Department of Environmental Protection, Division of Water Pollution Control, One Winter Street, Boston, MA 02108.

BD/CW/yg wp8:nantucket.pmt